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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 2020-000950

Dr. Agnes SlaymanAppellant

v.

South Carolina Department of EducationRespondent.

RECORD ON APPEAL - VOLUME IX

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(ROA 1052-1053 (James Testimony p. 968, l. 14 - p. 969, l. 3). Dr. Callicutt was not employed by the Chester County School District during the time of any of the events that are purportedly the basis of his complaint to the SCDE and he would have no reasonable belief to file the Complaint for matters he knows nothing about and that he did not even discuss with the School Board prior to making a complaint about matters to which he had no personal knowledge.

II. The Complaint processing by the SCDE violated Dr. Slayman's Due Process rights and State Board Regulations and Procedures.

Dr. Slayman's due process rights guaranteed by the Fourteenth Amendment to the Constitution prohibit any state from depriving any person of life, liberty, or property, without due process of law or denying any person equal protection of the law. Dr. Slayman's due processes rights were violated by the SCDE.

a. The SCDE engaged in notice and investigation failures and additionally violated R43-58.1.

Dr. Slayman was not timely notified of an investigation by the SCDE. Dr. Callicutt filed the Complaint against Dr. Slayman on October 14, 2015. Dr. Slayman was not notified by the SCDE of the Complaint until February 2018. Official written notice of the Complaint, giving Dr. Slayman written notice of the accusation, was not given to Dr. Slayman until March 28, 2018. Thus, the SCDE engaged in undue delay that violates Dr. Slayman's due process rights.⁴

The time span between Dr. Callicutt's Complaint and the SCDE's written notice to Dr. Slayman of a complaint amounts to 896 days or alternatively measured as 2 years, 5 months, and 14 days. Dr. Slayman filed a Motion to Dismiss on this very issue on August 16, 2018. Dr. Slayman

⁴ Dr. Slayman is not asserting that the time between March 28, 2018 and the five hearing that transpired on October 3, 2018, October 4, 2018, October 12, 2018, November 1, 2018, and November 2, 2018 is the constitutional violation. The undue delay amounting to the due process violation is the Agency's inaction between the complaint filing on October 14, 2015 and complaint notification to Dr. Slayman on March 28, 2018.

asserted that almost two and a half years without written notice of a complaint against her amounted to an egregiously long period of time, thereby prejudicing her substantial rights.

The SCDE also engaged communications in violation of R43-58.1, which states that “no preliminary information gathered by the State Department of Education concerning misconduct reasonably believed to constitute grounds for revocation or suspension of a certificate, including the name and certificate number of the certified educator, shall be disclosed to any third party.” Thus, even if the SCDE had reasonable belief that Dr. Slayman engaged in unprofessional misconduct for revocation or suspension of her certificate (which it did not), there should have been no mention of it.⁵ Thus, the SCDE further prejudiced Dr. Slayman’s substantial rights by disclosing that an investigation was occurring, thus violating R43-58.1, compounded by the egregious nature of failing to formally notify Dr. Slayman of the complaint or any investigation related thereto, for 896 days.

b. The Complaint should have been dismissed upon receipt.

The Complaint is significantly out of context to other types of claims of unprofessional conduct that the SCDE has pursued as grounds to act against an Educator’s certificate. The types of unprofessional conduct warranting this type of scrutiny include allegations of fraud, physical harm, stealing money, sex with students, and other types of egregious unprofessional conduct. The untrue allegations against Dr. Slayman source from grievants who were disgruntled employees seeking to punish their Superintendent for her efforts to hold them accountable. It is exceedingly

⁵ *State Department of Education Investigating Slayman*, The News & Reporter, January 14, 2016. <https://www.onlinechester.com/content/state-department-education-investigating-slayman>. “The News & Reporter has learned former Chester County School District Superintendent Dr. Agnes Slayman is under investigation by the S.C. Department of Education. According to the information, the investigation was begun on the strength of the report prepared for the school district by educational consultant Betty Bagley.”

rare for the SCDE to take action against a superintendent's license and this particular targeted action toward Dr. Slayman is highly unusual.

Context is key to consider here. An agency need not exercise its discipline discretion identically in every case, but it must follow its governing regulations. See *Daufuskie Island Util. Co., Inc. v. S.C. Office of Regulatory Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019) reh'g denied (Sept. 27, 2019); *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 332 S.E.2d 539 (Ct. App. 1985). The Board's decision about what penalty an educator faces is discretionary, but whether the SCDE follows the reporting and investigation regulations is not. If the SCDE purports that R43-58 and R43-58.1 require a hearing against Dr. Slayman (it so purports); then, it must also do so against all educators who are faced with charges of misconduct. The SCDE has zealously pursued Dr. Slayman when comparatively much more egregious circumstances have gone intentionally unaddressed and even rewarded by the SCDE. For example, the conduct of Dr. Quincie Moore⁶ is key to compare to alleged conduct of Dr. Slayman. On November 18, 2018, Dr. Quincie Moore, the Superintendent of Cherokee County School District at the time, was arrested on a charge of driving under the influence by the S.C. Highway Patrol when she rear-ended another vehicle on Interstate 85 around 1:15am when driving home from a Clemson University football game.⁷ Drunkenness is a ground for revocation or suspension of an educator's license. S.C. Code Ann. § 59-25-160(5).

⁶ Dr. Slayman intends no disrespect to Dr. Moore, as both women are career educators respectively dedicating more than thirty years of their lives to educating children. The comparison of the conduct alleged against such seasoned and respected superintendents is necessary.

⁷ See *Cherokee Co. School Supt. Dr. Quincie Moore charged with DUI*, WSPA 7News, November 19, 2018, <https://www.wspa.com/news/dr-quincie-moore-reaches-settlement-agreement-with-cherokee-school-district/>; *Quincie Moore: Educator Redemption? On rendering judgment ...*Fitsnews, November 21, 2018, <https://www.fitsnews.com/2018/11/21/quincie-moore-educator-redemption/>.

Dr. Moore's tenure as Superintendent ended as a result of her actions on November 18, 2018.⁸ Dr. Moore wrote in her resignation notice, "...On November 18, I put myself in a horrible position, and as a result, I have embarrassed my family, my colleagues, my profession, and my community... I have decided to retire so that the District can move forwards and refocus on the students..." *Id.* This shows that a substantiated finding for discipline was warranted.

Dr. Moore engaged in conduct that correlates to just cause for suspension or revocation of an educator's certificate; yet in response, the SCDE has taken no action against Dr. Moore and they even helped her by hiring Dr. Moore, after her resignation from the Cherokee County School District Superintendent, as their Director of the Office of Early Learning and Literacy at the SCDE.⁹ Comparatively, the unsubstantiated conduct alleged against Dr. Slayman has never amounted to conduct requiring revocation or suspension of her educator's certificate.

The comparison between Dr. Slayman and Dr. Moore is not in the reprimand, as *Deese* establishes that the reprimands can be different; the comparison is the reporting and investigation of misconduct, and whether a hearing is even necessary against an educator. If a hearing is not necessary against Dr. Moore; then, a hearing is not necessary against Dr. Slayman. To do otherwise, where the SCDE has arbitrarily pursued an investigation and hearing against Dr. Slayman's licensure, amounts to due process violations.

c. The SCDE improperly sought to limit the testimony of the Chester County School Board Members at the Hearing.

Dr. Slayman called four current and former Chester County School Board Members as

⁸ *Resignation Settlement Agreement between Cherokee Co. School District and Dr. Quincie Moore*, https://www.wspa.com/wp-content/uploads/sites/53/2019/01/Resignation20Settlement20Agreement20between20Cherokee20Co.20School20District20and20Dr.20Quincie20Moore_1546552549780_66472878_ver1.0.pdf.

⁹ See <https://ed.sc.gov/contact/staff-directory/>.

witnesses, including Sandra Stroman, Maggie James, William Stringfellow, and Jim Stroman. During the Board Members' testimony, Mr. Winburn refused to let the Board Members give full disclosure and testimony. When Mr. Winburn did that, it limited their ability to testify about matters pertinent to the State Board's deliberations. Comparatively, Mr. Winburn did not seek to limit the testimony of the witnesses called by the SCDE.

III. The Hearing before the State Board of Education violated Dr. Slayman's Due Process rights and State Board Regulations and Procedures.

There were multiple violations of the State Board's Rules involving the Procedures for Educator Certification Hearings. These violations were to such a degree that the whole hearing before the State Board was nothing more than a sham, and a blatant attempt to discredit a woman who has devoted her life to educating children. There were multiple violations of the procedures laid out that the State Board must follow, and as such, Dr. Slayman's procedural due process rights were violated.

a. Numerous violations of the BCAF Procedures for Educator Certification Hearings occurred.

The hearing process¹⁰ that Dr. Slayman was subjected to was nothing more than a blatant violation of her procedural due process rights. The most egregious violation of the State Board's rules was in BCAF IV(K). That section pertains to the Hearing Officer's R&R and presentation to the Board. That section in relevant part states:

Following the hearing, the hearing officer will formulate a written report stating his or her findings of fact and recommended action and will present the report to the Board for consideration. Prior to presenting the report to the Board, the hearing officer must serve the parties with a draft of the report and provide the opportunity for each party to file objections to the report. Once the hearing officer has

¹⁰ Dr. Slayman would like to acknowledge that the Hearing Officer, Ms. Pike, conducted a thorough and impartial hearing. Her diligence in the matter is not the issue on appeal in this argument section, it is the hearing before the State Board that Dr. Slayman asserts is a basis for reversal of the Public Reprimand.

considered the objections and finalized his or her report, the hearing officer will present the report at the next scheduled board meeting. The hearing officer will make every effort to present the report to the Board within 30 days of the hearing. Notice will be given to both parties of the time, date, and place of the hearing officer's presentation to the Board.

See BCAF IV(K). This Procedure states that the hearing officer will present her finalized report to the Board. In the case of Dr. Slayman, this did not happen. There is no permissive language in BCAF IV(K), the Procedure states, "the hearing officer will formulate a written report stating his or her findings of fact and recommended action and will present the report to the Board for consideration." (emphasis added). Here, rather than allow the hearing officer to present her report to the Board as required by BCAF, the SCDE disallowed the Hearing Officer from presenting her findings.

The SCDE arbitrarily added procedural limitations, that are nowhere in writing, that are directly contradictory to the written BCAF Procedures that the SCDE is required to follow. Counsel for the SCDE added unwritten rules making the State Board hearing substantively a sham hearing. The presenters were limited to a mere three minutes to discuss more than a week-long hearing with no opportunity for rebuttal. (ROA 1731). Those improper and seemingly non-existent procedures resulted in Mr. Winburn taking one purported statement, by Dr. Slayman to Williams, well out of context of the testimony and utterly disregarding the facts surrounding the purported threatening statement. It was clearly intended to inflame the State Board members, without providing any context within the facts that were undisputed and affirmed by Williams.

"Procedural due process does not require certain results; it requires only fair and adequate procedural protections." *Tri County Paving, Inc. v. Ashe County*, 281 F.3d 430, 437 (4th Cir. 2002). Procedural due process insists on fair play. *McIntyre v. Securities Commissioner of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018)(citing *Hipp v. S.C. Dep't of Motor*

Vehicles, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009)). Dr. Slayman was not afforded procedural protections that are intended to secure fair play. She was subjected to a hearing before the State Board that did not follow its own procedures. Instead, the SCDE decided to not allow the Hearing Officer to present her report to the Board, where she recommended that the charges against Dr. Slayman be dismissed. It appears that this arbitrary rule change that is contradictory to the written BCAF Procedures has the intent to prevent a Hearing Officer who issued a decision for Dr. Slayman to present why she made that very recommendation. These rule changes in the hearing procedures is directly contradictory to the written procedures.

Furthermore, Mr. Henry Gunter, Deputy General Counsel in charge of educator certification for SCDE, informed Dr. Slayman's counsel she would only be afforded three minutes to address the Board before it made its decision about Dr. Slayman's certification. There is nothing in the BCAF that specifically limits the time a person has to address the Board.

The extent of the procedural protections due process requires corresponds to the extent of the potential deprivation. *McIntyre*, 425 S.C. at 449, 823 S.E.2d at 198. The potential deprivation was discipline on Dr. Slayman's certification and have notice sent out to the National Association of State Directors of Teacher Education and Certification (NASDTEC) and all South Carolina school districts. See BCAF IV(M). The result notified subscribers throughout the country of Dr. Slayman's Public Reprimand; in addition, it harmed her publicly to all the school districts in South Carolina. Because this deprivation is so weighty, promulgated procedures are intended to ensure such decisions are not reached lightly or without due process. In Dr. Slayman's case, those procedures were put aside for no other reason than trying to finagle the procedures in such a manner so as to limit the State Board's information and prevent the State Board from hearing from the Hearing Officer. Thus, the actions violated Dr. Slayman's procedural due process rights and

the Public Reprimand should be overturned.

The right to hold follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause. *Brown v. South Carolina State Bd. of Educ.* 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990)(citing *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400 (1959)). Dr. Slayman had the right to practice her profession as an educator. Dr. Slayman has the right to any scrutiny of her certification to follow the procedures laid out by the regulations and BCAF procedures.

Dr. Slayman was subjected to an unreasonable government interference on her ability to practice her form of specific employment. The State Board decided to not follow its practices and allow the Hearing Officer, who had written and issued a R&R, to present it to the State Board. See BCAF IV(K). This unreasonable interference was in violation of procedures that states the Hearing Officer will present her report to the Board. Indeed, one State Board Member, Dr. J.R. Green, asked a question, and he asked what the R&R even said. It proves that Dr. Green had not seen the Hearing Officer's R&R, and this alludes to the fact that maybe all State Board members had not read or even possibly been given the R&R prepared by the Hearing Officer. Due to this interference perpetuated by the SCDE, Dr. Slayman was forced to have her procedural due process rights violated without just cause.

Lastly, the Hearing Officer's R&R recommended that the complaint against Dr. Slayman be dismissed. Because the Hearing Officer was unable to present the evidence to the Board, and there were questions by at least one State Board member asking what the R&R even recommended, there is no evidence that the State Board was provided the bare minimum required to take action toward Dr. Slayman's educator's certification.

Additionally, after the Hearing Officer rendered her initial decision and gave the parties

leave to provide rebuttal responses, Mr. Winburn who represented the SCDE in the preceding, violated the procedures used by the SCDE and sent the SCDE's objections to the R&R directly to the State Board Chair, as well as the Hearing Officer. The SCDE's objections should have only been sent to the Hearing Officer and counsel for Dr. Slayman. The Hearing Officer noticed this procedural violation and indicated such in her final decision letter. This bares question to Mr. Winburn's intent in not following procedure as an effort to influence the State Board's decision prior to the State Board receiving the Hearing Officer's Final Report.

When the State seeks to take action against a professional license, Constitutional interests are implicated, and procedural due process requirements must be met. See *Brown* at 329, 391 S.E.2d at 86; *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752 (1957). Here, it is obvious from the record that those requirements have not been met. The State Board decided not to follow their own procedures that would have ensured a fair process. Instead, the SCDE created arbitrary rules found nowhere in the Procedures or Regulations that did nothing but prejudice Dr. Slayman's substantial rights. Indeed, when the rules and procedures can be so flippantly cast aside at the merest whim, justice and fairness cannot be ensured, the only thing that can be ensured is chaos and inconsistency with the law and application thereof.

b. These Regulation changes purportedly made by the Department are procedurally deficient and violated the requirement for Adoption, Amendment, and Repeal of Regulations required by the South Carolina State Register and South Carolina Code of Regulations.

The procedural changes to disallow a Hearing Officer from presenting the Report and Recommendation to the Board and limiting presentation the presentation to the Board to three minutes without rebuttal are failures by the SCDE to modify the pertinent regulations related thereto.

The South Carolina State Register is an official publication and it is a temporary update to

South Carolina's official compilation of the South Carolina Code of Regulations. Changes in regulations, whether by adoption, amendment, repeal, or emergency action must be published in the State Register pursuant to the provisions of the APA. The State Register also publishes other documents issued by state agencies considered to be in the public interest. All documents published in the State Register are drafted by state agencies and are published as submitted. Publication of any material in the State Register is the official notice of such information.

To adopt, amend, or repeal a regulation, an agency must publish in the State Register a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal and request a public hearing. Also, the regulation must be submitted to the General Assembly for approval. If no legislation is introduced to disapprove or enacted to approve before the expiration of a one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the State Register.

This mode of the adoption of rules, the amending of rules, and the repeal of rules is fundamental to the rule of law. *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 447, 823 S.E.2d 193, 197 (Ct. App. 2018), reh'g denied (Feb. 19, 2019), cert. denied (June 28, 2019). This very issue was before the Court of Appeals of South Carolina and the Court found that the appellants were denied procedural due process based on the Agency's failure follow the requirements for adopting, amending, and repealing regulations. *Id.*

The SCDE has made no official state publication of the regulation changes it purported to have made to R43-58 or the Procedures for Educator Certification Hearings as set forth in BCAF. The SCDE is aware of such requirements for regulations changes because it actively engages in

the above outlined steps to adopt, amend, and repeal a regulation.¹¹ The 2018 State Register, Volume 42, included multiple drafting notices issued by the SCDE for the following regulations: Accounting and Reporting SR 42-8, Medical Homebound Instruction SR 42-4, Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts SR 42-5, Operation of Public Pupil Transportation Services SR 42-8, and School Resources Officers SR 42-5. BCAF was issued on April 4, 2004 and was revised on August 17, 2004, August 10, 2005, October 8, 2008, February 11, 2009, and April 12, 2016. No revisions were made by the SCDE to the regulations and procedures applicable to discipline in Dr. Slayman.

The Department's failure, to not follow the requirements for adoption, amendment, and repeal of Regulations required by the South Carolina State Register and South Carolina Code of Regulations and when changing the Procedures for an educator's hearing, amounts to a denial of Dr. Slayman's procedural due process rights.

IV. The State Board of Education erred when it failed to consider the recommendations of the Hearing Officer that recommended the dismissal of the Complaint against Dr. Slayman.

The State Board heard essentially six minutes of perfunctory information, that can amount to nothing more than an introduction of the parties, and from that perfunctory six minutes they issued a Public Reprimand to Dr. Slayman, when comparatively the Hearing Officer, selected by the SCDE, heard 5 days of testimony from nineteen witnesses, on several days, that ran well into the evening hours.

The Hearing Officer issued the following recommendation:

Having carefully considered all the testimony and exhibits, I find that there is insufficient probative evidence to prove the allegations of unprofessional conduct in the nature of workplace harassment and intimidation of employees or on any other basis alleged herein and described below. The evidence presented at the

¹¹ See South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.php>.

hearing in support of these allegations was the testimony of five employees that comprised Slayman's senior cabinet. This testimony was riddled with statements that were contradicted by the testimony of numerous other witnesses, thereby making the truth and veracity of such highly questionable. Several of these employees were also disgruntled over job performance issues or other issues related to the job, raising further issues of credibility. Tragically, these five individuals put into motion a chain of events that culminated in a media frenzy, marking an end to Slayman's otherwise unblemished education career.

(R&R, p. 21). The Board erred when not following the recommendation.

a. The State Board's decision was arbitrary and capricious.

The impartial Hearing Officer, a contracted employee of the SCDE, recommended complete dismissal of the allegations. The Board arbitrarily and capriciously disregarded the recommendation. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Okadigwe v. S.C. Dep't of Labor, Licensing, & Regulation*, No. 2017-001339, 2019 WL 2025269, at *1 (S.C. Ct. App. May 8, 2019) quoting *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Courts require the [governmental entity] evaluate the evidence and carry out their important responsibilities consistently, within the 'objective and measurable framework' the law provides." *Daufuskie Island Util. Co., Inc.*, 427 S.C. at 464, 832 S.E.2d at 575 quoting *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 113, 708 S.E.2d 755, 765 (2011).

Here, Mr. Winburn went before the State Board and alarmingly misstated the evidence in the record. The Hearing Officer accurately states that the most egregious accusation against Dr. Slayman was that she engaged in hostile treatment of the five complainants to include intimidation, public degradation, threats such as "I will rip your throat out", "I will kill you", "I will cut your legs off." (R&R, p. 22). The Hearing Officer weighed the evidence and found such allegations to

be untrue. (R&R, pp. 21-24). The Hearing Officer appropriately noted that the only evidence in the record regarding such alleged egregious behavior is the testimony of the five grievants, all of whom benefited in one form or another by ousting Dr. Slayman from her position. (See R&R 23).

The consultants, employees, and four Board members who testified during Dr. Slayman's case testified that their interactions with Dr. Slayman were professional and pleasant, with no evidence of the behaviors alleged by the grievants. (R&R, p. 22). "The four Board members and the four consultants went on to testify that they had the opportunity to observe Dr. Slayman's interactions with her staff and that such interactions were always pleasant." (R&R, p. 22). Many witnesses testified that they had the opportunity to observe the atmosphere and morale in the District office and they all testified that such was very good. *Id.* None of the witnesses called by Dr. Slayman, who testified about their observations at the District Office, saw any evidence of the hostile environment described by the five grievants. *Id.*

One of the most important witnesses was "Slayman's administrative assistant, McConnell, whose office was adjacent to Slayman's, [who] testified that she had a good rapport with Slayman and had never seen these behaviors that the five grievants alleged. In fact, she described the filing of this grievance as a "coup"." (R&R p. 23).

The grievants with the apparent support of two Board members engaged in a media campaign and trial by public opinion against Dr. Slayman and those who supported her when these false allegations transpired. Ms. James, a Chester Board Member, testified:

Dr. Slayman was an outstanding leader of our district during the time that she served. It was very disheartening to know that she was surrounded by the kind of people that would set out to destroy someone's career. I had never been caught up in any situation like that before that brought on personal attacks from people in the community. I felt threatened. My life was in danger. I had people following me, people taking pictures of me at various places. It was just an onslaught of things on the media, on social media. Information was being put out there. I had a drawing of someone went on a map of Chester community and, I guess, googled earth and

googled my home and put it out there on the Facebook page. It was just unbelievable how they were able to enrage a community against the educational process for our children trying to disrupt the educational process for the children of Chester County all because they thought they were gonna gain something personally. And I know that you may think you have a harvest, but you reap what you sow. And karma can really be something when it comes back into your own life. Dr. Slayman did not deserve what happened to her, and I just as a board member, I just hope and pray that I never have to live through anything like that again in my life.

(James Testimony, p. 1025, l. 21 - p. 1036, l. 24).

King and Gardner alleged public beratement by Dr. Slayman, yet no corroborating evidence was brought forth. (R&R p. 23). It was noted by several witnesses that Chester is a small, tightly knit community. (Id.). As such, it is highly unlikely that knowledge of this type of behavior could be suppressed for three years, especially given the deeply rooted connections of the Board members and the fact that Dr. Slayman's purported behavior was not just behind closed doors. Notably, problems with the prior superintendent quickly reached the ears of Board members. (Id.). This begs the question of why this type of shocking and reprehensible behavior, if it occurred as alleged, would not have been fodder for discussion all over Chester. (Id.).

The Bagley Report¹² and the conclusions therefrom resulted from time and scope limitations from the Board and was made with affirmative conclusions regarding Dr. Slayman's treatment of persons other than those being interviewed, without first verifying these incidents with the people involved. (Id.). The Bagley Report intentionally withheld any contradictory testimony given to the allegations made by the grievants. Both Dr. Slayman and McConnell

¹² Betty Bagley, the author of the Bagley Report, was an employee of the SCDE when the Bagley Report was written. Bagley has a long-standing relationship with the SCDE. Again, this connection draws into question the SCDE's motive for zealously pursuing Dr. Slayman for these false allegations made by the grievants, as publicized by Bagley in her document known as the Bagley Report. As shown by Mr. Winburn's questions supporting the credibility of Bagley during his cross examination of Dr. Slayman's witness, Charles Moore. (Moore Testimony, p. 788, l. 8 -p. 790, l. 13).

testified during the Hearing that they provided testimony to Bagley that rebuts the allegations, yet no such information was produced in the Bagley Report or by Bagley verbally to the Chester County School Board, as affirmed by the Board members testimony at the Hearing.

None of the grievants, other than Williams, ever approached Dr. Slayman regarding any matters that offended them prior to filing this grievance. (R&R p. 23). That is because none of those grievants were facing any hostile work environment.

The one circumstance of a grievant every telling Dr. Slayman of any concerns occurred more than two years prior to the filing of the grievance. Williams felt that Dr. Slayman's statement to her on August 20, 2013, was inappropriate. This grievance was not filed until September 8, 2015. Williams did not file a grievance for over two years about a matter that allegedly made her feel threatened. The concept defies logic. Williams worked with Dr. Slayman for more than another two years on a daily basis; she was the head of HR and Dr. Slayman was the Superintendent. If this action had merited the Public Reprimand that Dr. Slayman received, Williams would have taken action on it when it occurred. Williams could have filed a grievance then; she did not. Williams could have filed a police report; she did not. Williams could have filed a Charge of Discrimination; she did not. Williams as the top HR official in the District would have personal knowledge about all of the avenues available to her to address the matter, if the conduct were truly as she alleges. Williams took none of these steps, she only filed a grievance against Dr. Slayman as a planned mutiny lead initially by Stroud and Garner, quickly added upon by Dr. King, and then Williams and Clinton were recruited to jump on this planned mutiny to end Dr. Slayman's career.

On the one occasion Williams brought a concern to Dr. Slayman's attention, on August 20, 2013, as confirmed by Williams' own testimony during cross examination, Dr. Slayman

respectfully heard Williams' concerns, assured Williams that she would not make statements of the nature that Williams said made her uncomfortable, Dr. Slayman apologized, and Williams confirmed that Dr. Slayman followed up on her statement and never engaged in making such statements again. (Williams Testimony, p. 271, l. 10 - p. 274, l. 25; see also Dr. Slayman Testimony, p. 1255, l. 12- p. 1258, l. 4).

Williams credibility in alleging Dr. Slayman was treating her with hostility is utterly undermined by the acknowledged facts that for the years leading up to the grievance Dr. Slayman and Williams worked fine together. At Williams' request to have Dr. Slayman as a reference, Dr. Slayman gave Williams a glowing reference. (Williams Testimony, p. 278, l. 6-13; p. 277, l. 7-13). It is shocking to think that such kindness is returned with this attempt to end Dr. Slayman's career. The Hearing Officer having heard all of the evidence made the same conclusions. Dr. Slayman did not engage in the complained of conduct, her actions did not amount to conduct worthy of disciplinary action against her certificate, and Dr. Slayman had already expansively suffered as a result of these actions.

b. The State Board's decision is clearly erroneous in view of the substantial evidence.

"Under the APA, the reviewing court may not substitute its judgment for that of the agency on questions of fact, but may reverse the agency's decision if the decision is clearly erroneous in view of the substantial evidence." *Osman v. S.C. Dep't of Labor*, 382 S.C. 244, 249, 676 S.E.2d 672, 675 (2009) citing S.C. Code Ann. § 1-23-380(5) (Supp.2008). "Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." *Forman v. S.C. Dep't of Labor*, 419 S.C. 64, 70, 796 S.E.2d 138, 141 (Ct. App. 2016) quoting *Trimmier v. S.C. Dep't of Labor, Licensing & Regulation*, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013) (quoting *Porter v. S.C. Pub. Serv. Comm'n*,

333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998)).

It is relevant to compare the facts of *Osman*, where a Public Reprimand of a licensee was upheld, in comparison to this case. In *Osman*, “Dr. Osman's three concessions constitute substantial evidence in support of the Board's actions. Further, the Disciplinary Panel for the Board and the Board both limited the finding of misconduct to the three admitted deviations from the standard of care.” *Osman v. S.C. Dep't of Labor*, 382 S.C. 244, 249, 676 S.E.2d 672, 675 (2009).

Specifically, Dr. Osman agreed, “it was inappropriate ... to perform a primary C-Section in a community county hospital setting without adequate resources immediately available, i.e.: blood products and surgical backup.” Additionally, Dr. Osman agreed that she “failed to have surgery stand-by at the bedside in the event that hysterectomy became necessary. When Dr. Ross was called by [Dr. Osman] ... it was learned that Dr. Ross was away on vacation and not available. Therefore, Dr. Osman essentially had no surgical backup in the event that a hysterectomy became necessary.” Lastly, Dr. Osman agreed she “deviated from the appropriate standard of care by failing to provide written informed consent to [a] patient ... as to the possible complications and difficulties which can occur with C-Section in a patient with placenta previa.”

Id. The Board, the Administrative Law Court, and the Supreme Court of South Carolina all agreed that there was substantial evidence supporting the public reprimand issued to Dr. Osman. Whereas, here, the only quasi-judicial body that heard the evidence, the Hearing Officer, has found that there is *not* substantial evidence supporting any action toward Dr. Slayman’s educator’s license.

Dr. Slayman testified at the hearing and rebutted the accusations against her. She testified that there is absolutely no basis for such allegations. (ROA 1413, l. 20 - 1414, l. 2; ROA 1432, l. 1-14; ROA 1442, l. 1-1489, l. 14). Dr. Slayman and all of her witnesses rebutted the accuracy of the Bagley Report. (ROA 1369, l. 4- p. 1372, l. 16).

During the cross examination of the grievants and through confirmation by testimony from Dr. Slayman and other witnesses, it is clear that the grievants had personal motives for their self-serving and group planned mutiny, also known as a ‘grievance’. (ROA 1373, l. 5 - p. 1374, l. 21).

Dr. King and Gardner both sought Dr. Slayman's job. Dr. King was engaging in inappropriate conduct. Stroud's and Gardner's jobs were at risk. Williams was angry that she had been questioned about a day she did not show up to work without notifying Dr. Slayman¹³ and a proposed raise to her salary had not been approved preceding her joining the grievance bandwagon. (See Williams Testimony, p. 281, l. 19 - p. 282, l. 19; see also Dr. Slayman Testimony p. 1258, l. 5-23). In her testimony at the Hearing, Clinton admitted she only joined the grievance after she was persuaded to do so, based on what the other grievants told her.

c. The State Board erred by failing to consider mitigating circumstances surrounding the alleged misconduct.

Dr. Slayman "was a great superintendent. She was really forward thinking. She had a goal set for the students of our district. She was well received by the community. Let's see, she just had everything on go. We upgraded all of the technology in all of the schools. She worked with the phone company to get the entire county Wi-Fi'd, not only in Chester but Comporium out of Rock Hill that handles Lancaster County, they were -- she was able to work out an agreement with them for the children that live in the eastern part of Chester to be able to have available Wi-Fi service. She worked out that with them. And she was chosen to even go to Washington to serve on a national committee for education." (ROA 967-968 (James Testimony p. 883, l. 15 - p. 884, l. 5). All of Dr. Slayman's evaluations were positive and she consistently received positive feedback for her efforts to help the children of the District and the community where they lived. (See ROA 969-

¹³ Essentially, Williams was a 'no call no show' to work shortly before she filed this grievance against Dr. Slayman. (See Williams Testimony, p. 283, l. 1 - p. 285, l. 14; Dr. Slayman Testimony, p. 1259, l. 11 - p. 1261, l. 10). Williams denied this circumstance. In most jobs a 'no call no show' to work would be conduct worthy of termination; yet, Dr. Slayman compassionately did not terminate Ms. Williams, rather she talked with Ms. Williams about it and asked that in the future Ms. Williams provide notice to her supervisor when she would not be at work. Dr. Slayman's conduct was utterly reasonable and the exact opposite of hostility because Dr. Slayman would have been within her right to fire Williams for such behavior.

974 (James Testimony p. 885, l. 5 - p. 884, l. 5).

Throughout her tenure as Superintendent, Dr. Slayman received various honors, awards, and accolades for her innovative methods of bringing the District into the twenty first century and for bringing additional money into the District. Some of those included:

- a. Dr. Slayman received the Superintendent of the Year Award from the S.C. Career and Technology Education Association for the 2012-2013 school year.
- b. For 2012, Great Falls Elementary was selected as a Pathfinder School.
- c. For 2013, Dr. Slayman and the District were named a Duke Energy Power Partner.
- d. For 2013, the District was named a Microsoft Alliance Partnership. The District was the only one named in the Southeast and only one of 12 in the United States.
- e. In 2013, Dr. Slayman was invited to be a speaker at the Microsoft Mobility Conference in N.Y. This conference was attended by business and educational leaders from around the world.
- f. In 2014, Dr. Slayman was nominated for the S.C. Superintendent of the Year.
- g. In 2014, Dr. Slayman was named Educator of the Year by the S.C. Resource Officers Association.
- h. In 2014, two high schools in the District were named Bronze Schools by U.S. News and World Report.
- i. In 2014, Dr. Slayman was one of 120 superintendents from across the U.S. invited to attend President Obama's White House ConnectED Superintendent Summit to discuss advancing education and advancing students across the U.S. through academics.
- j. In 2015, Dr. Slayman was recognized by the Martin Luther King Celebration Committee as the Grand Master of the parade. She was the first superintendent to be given that honor.
- k. In 2015, Dr. Slayman was nominated by the school board, the CEO's from business and industry, and the legislative delegation for Chester, Fairfield and Cherokee Counties for the S.C. School Administrators' S.C. Superintendent of the Year award.

(R&R, pp. 4-5).

Dr. Slayman was at the height of her career when the leaders who directly reported to her

connived as a group, in secret, to oust her as Superintendent. It is truly tragic that a career educator such as Dr. Slayman, who has done so much for the children of South Carolina, would be treated in such an abominable manner.

V. The State Board of Education erred in issuing the Public Order of Reprimand.

The discipline issued to Dr. Slayman is not within the permissible range applicable to Public Reprimands issued to educators in South Carolina. A decision may potentially be arbitrary and capricious if it “does not fall within the range of permissible decisions applicable in a particular case.” *Okadigwe v. S.C. Dep't of Labor, Licensing, & Regulation*, No. 2017-001339, 2019 WL 2025269, at *1 (S.C. Ct. App. May 8, 2019) quoting *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

The SCDE violated Procedure BCAF(IV)(M), which states that in cases of certificate suspension, revocation, or surrender of educator certificate *only then* will the Office of Educator Certification send notice to all SC School Districts and the NASDTEC Clearinghouse. Comparatively, it states, that the Office of Educator Certification will send notice of a public reprimand to all South Carolina school districts – it does not mention NASDTEC. Yet, the final paragraph of the Public Reprimand issued to Dr. Slayman states, “The public reprimand of Dr. Slayman, certificate 134958, shall be reported to the NASDTEC Clearinghouse...” The SCDE improperly notified the NASDTEC Clearinghouse of the Reprimand issued to Dr. Slayman, which is an action in violation of Procedure BCAF(IV)(M) and not a permissible discipline and thus it violates statutory provisions.

CONCLUSION

For the foregoing reasons, Appellant asks that the decision of State Board of Education be reversed and vacated accordingly so that the Public Reprimand is retracted, and notification of such retraction is issued to all of the entities informed of the Public Reprimand.

Respectfully submitted,

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November 27, 2019
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dr. Agnes Slayman,

Appellant,

v.

South Carolina Department of Education,

Respondent.

Docket No. 19-ALJ-30-0337-AP

PROOF OF SERVICE

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SC ADMIN LAW COURT

STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM SOUTH CAROLINA STATE BOARD OF EDUCATION

Appellate Case No. 19-AIJ-30-0337-AP

The South Carolina Department of Education,

Respondent,

v.

Dr. Agnes M. Slayman

Appellant.

BRIEF OF RESPONDENT

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DEC 23 2019

SC ADMIN LAW COURT

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STATEMENT OF ISSUES ON APPEAL

The issuance of an Order of Public Reprimand by the State Board of Education was made after a thorough review of the testimony and evidence presented during a prior evidentiary hearing in the matter before a State Board of Education approved hearing officer. While the Appellant contends, inter alia, that she was not afforded her constitutional right of due process, Respondent asserts that State Board of Education's Order of Public Reprimand should be affirmed on the following grounds:

- I. The SCDE properly accepted the report of alleged unprofessional conduct, which warranted further investigation.
- II. The investigative process, notice and pretrial exchange of information ensured Appellant's due process.
- III. The hearing before the State Board of Education ensured Appellant's due process rights and was in accordance with State Board Regulations and Procedures. The submission of the Order of Public Reprimand to NASTEC was customary and proper. (III and V combined).
- IV. The State Board properly issued the Order of Public Reprimand upon review of the hearing transcript, exhibits, the Report and Recommendation along with exceptions.

STATEMENT OF THE CASE

The State Board of Education (State Board) issued an Order Public Reprimand against Appellant on September 10, 2019, based on allegations that Appellant engaged in unprofessional conduct. The order was issued following a lengthy evidentiary hearing before a hearing officer that lasted multiple days. The State Board was presented with the Report and Recommendation of the Hearing Officer, along with the SCDE's exceptions to the Report and Recommendation and the entire written transcript of the proceeding. Counsel for Appellant and Counsel for Respondent were afforded an opportunity to address the State Board. A non-participating attorney within the Office of General Counsel presented the Hearing Officer's Report and Recommendation to the State Board. Upon its deliberation of the matter, the State Board voted to issue an Order Public Reprimand. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On September 3, 2015, a report was presented by Ms. Betty Bagley, a seasoned educator with over forty years of experience in South Carolina, to the Chester County School District Board of Trustees (Board) ROA 1715. Ms. Bagley had been commissioned by the Board to investigate allegations, inter alia, that District Superintendent, Dr. Agnes M. Slayman (Dr. Slayman) created a hostile work environment for district office employees. ROA 1724. The report detailed the results of interviews Ms. Bagley conducted on August 31, 2015, through September 3, 2015. The ten page report, which later became known as the "Bagley Report", consisted of interviews of Dr. Slayman¹ and her immediate staff. ROA 1715-1724. According to the conclusions of the Bagley

¹ Appellant describes how Bagley requested Dr. Slayman's resignation without citing the record. Counsel for Appellant misleads the court. Rather than demanding Slayman's resignation, Ms. Bagley was curious. Dr. Slayman testified: "And then I asked her at that point, why are you asking me to resign? Are you –is this what we're here for – to do? And she said, no, she was just curious." ROA 1356.

Report, the staff accurately described a hostile work environment that escalated over the previous two years; the staff's health had been adversely affected as a result of the work environment; and Slayman's ongoing conduct and pattern of comments had possible legal ramifications for the school system. ROA 1724. The Bagley Report was presented to the Board. However, the Board took no action. On September 8, 2015, a written grievance was filed with the Board Chair of the Chester County School Board, due to an alleged "hostile work environment, implications of ethical violations, and racial and threatening remarks by Dr. Agnes Slayman, Superintendent of the Chester County School District." ROA 1711. The grievants who signed the letter seeking a closed door meeting with the Chester County School Board were members of Dr. Slayman's cabinet, all of whom appeared in the Bagley Report initially disregarded by the Board.² The signatories of the grievance were: Dr. Charles King, Associate Superintendent of Instruction, Mr. Jeff Gardner, Associate Superintendent of Operations, Ms. Shawn Williams, Executive Director of Human Resources, Ms. Anna Stroud, Executive Director of Finance, and Ms. Brook Clinton, Public Information Officer, all of whom provided sworn testimony in the hearing in this matter. Id.

On September 30, 2015, a Settlement Agreement and Release was executed by Dr. Slayman, which effectively ended her tenure as Superintendent of Chester County School District. ROA 1734. In a letter dated October 14, 2015, Interim Superintendent Dr. V. Keith Callicut reported the allegations of unprofessional conduct to the SCDE pursuant to State Board Regulation 43-58.1. ROA 5.

On March 28, 2018, the SCDE notified Dr. Slayman that the State Board was prepared to take action against her teaching certificate as a result of the allegations of unprofessional conduct. ROA 4. On April 11, 2018, Dr. Slayman, through her legal counsel, requested a hearing.

² Appellant describes "several" meetings for the purposes of planning and drafting of the one page grievance, without citing the record. This is conjecture on the part of the Appellant, not fact.

Prior to the hearing in this matter, Dr. Slayman filed a Motion to Dismiss Complaint and Motion to Stay Hearing. ROA 19. In her motion, Dr. Slayman claimed that her due process rights had been violated, yet she had not yet availed herself of the process offered by Respondent as part of its hearing process. She further denied having engaged in unprofessional conduct, and argued that the matter should be stayed during the pendency of a lawsuit she filed *while* the SCDE was attempting to schedule the matter for a hearing. ROA 45. Dr. Slayman argued that since the Chester County School Board of Trustees refused to take action against her, it would be improper for the State Board to do so. In its Memorandum to the hearing officer in response to the motion, the SCDE submitted the following:

Ultimately, the facts and circumstances surrounding Respondent's employment dispute are largely irrelevant to the pending matter. If anything, these extraneous circumstances described in detail by the Respondent display a need for investigation by the SCDE due to the fact that the district board failed to adjudicate the merits of the claim, which the Respondent plainly concedes. Def.' s Mot. Dismiss ¶75.

Following the notice letter, which was sent to Respondent's counsel, the Respondent rebuffed the SCDE's efforts to schedule this matter for a hearing, citing vacation plans throughout the summer. Respondent then decided to file a lawsuit against multiple potential witnesses in this matter. While the timing of the lawsuit is suspicious since it coincides with the SCDE's efforts to schedule the hearing of the certificate matter, the Respondent should be estopped from seeking relief contained in her motion since *Respondent* asked to postpone the hearing prior to filing the lawsuit and prior to filing this motion. Furthermore, it is unclear how the Respondent can argue that the educator certificate matter is unwarranted because the underlying issues were resolved at the district level, while at the same time alleging in circuit court that the district has caused her significant damages.

The Hearing Officer denied the Motion to Dismiss and the Motion to Stay the Proceedings. ROA 66.

The hearing in this matter was conducted October 3, 2018, before Malane Pike, the board-appointed hearing officer. The parties agreed to the sequestration of witnesses. Tr. 595. Testimony continued on October 4, October 12, November 1, and finally concluded November 2, 2018, after more than thirty hours of testimony.

Based on the nature of the allegations of a hostile work environment, the SCDE called the members of Dr. Slayman's cabinet to testify. ROA 58-59. Other than Callie McConnell, the only other employee to testify, the senior cabinet worked closest with Slayman. This is confirmed by Dr. Slayman's testimony. ROA 1428. Although the witnesses were sequestered, their testimonies mirrored each other, and corresponded with the findings contained in the Bagley Report. Based upon certain testimony, counsel for Dr. Slayman accused counsel for the SCDE of "coaching" witnesses. ROA 276. In addition to the immediate cabinet members, the SCDE called Ms. Jean Ligon, who was able to corroborate the testimonies of the witnesses, because she offered her observations of the cabinet members who would seek her counsel as a school psychologist and Director of Special Education for the District. ROA 517, 529.

Dr. Slayman was allowed to call multiple witnesses to testify on her behalf, many of whom were part-time consultants for the District. Dr. Slayman called no witnesses who worked as principals, assistant principals, or teachers who would have observed her interaction with her cabinet in District office, or elsewhere in the District. Rather, the only witness called by Dr. Slayman who could have testified about Dr. Slayman's interactions with her cabinet was Ms. Callie McConnell. ROA 1428. Ms. McConnell testified that the cabinet members would not confide in her because she served as the clerk to the Chester County School Board as well as the secretary to the Superintendent. ROA 1110, 1111. After more than thirty hours of testimony, Dr. Slayman asked that the record be left open so that she could obtain an affidavit from a witness who was apparently unable attend any of the previous five days of testimony. The SCDE did not object to this request. ROA Tr. 1461.

ARGUMENT

STANDARD OF REVIEW

As to questions of law, the appellate court's standard of review is *de novo*. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). See also S.C. Code Ann. § 59-25-260 ("The findings of fact by the State Board of Education are final and conclusive. A person aggrieved by the order of the State Board of Education, within thirty days, may appeal to the Administrative law court, as provided in Sections 1-23-380(B) and 1-23-600 (D), to review errors of law only...).

I. The SCDE properly accepted the complaint of alleged unprofessional conduct, which warranted further investigation.

Appellant contends that the report of unprofessional conduct made by Interim Superintendent Callicutt was improperly made. Appellant goes on to argue facts related to her pending lawsuit by alleging that the District violated its contract with Dr. Slayman about the District's alleged wrongdoing, which is not an issue on appeal and should not be considered.

The report of alleged unprofessional conduct is mandatory. Pursuant to State Board Regulation 43-58.1, "A district superintendent, on behalf of the local board of education, shall report to the Chair of the State Board of Education and the State Superintendent of Education, the name and certificate number of any certified educator who is dismissed, **resigns, or is otherwise separated** from employment with the **district based on allegations of misconduct, including but not limited to...**immorality, moral turpitude, or dishonesty..."(emphasis added).

Appellant avers of the regulation, while not defining "misconduct", the intent was to ensure that sexual predators and criminals could not relocate to another school district. Such an extremely narrow reading of the regulation would lead to an absurd result, and would ultimately leave school districts vulnerable and it would render a whole host of unprofessional conduct outside the scope of the State Board's enforcement. See Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845

(2002) (“[A] court must reject a statute’s interpretation leading to absurd results not intended by the Legislature.”) The term “including but not limited” must be given its plain meaning to effectuate the intent of the legislature. The regulation cannot be so narrowly read, as Appellant argues to include only crimes committed and to ward off sexual predators. Ultimately, the SCDE is charged with the administration of the regulation. While there is no allegation in this case of a crime or sexual impropriety, the SCDE must be afforded deference in its interpretation of the regulation to include acts of hostility as described in the Bagley Report, which was known to Dr. Callicut at the time of his report of the allegations. The SCDE investigates a wide variety of cases of alleged unprofessional conduct, which range from the willful violation of statutory admissions requirements to sexual misconduct cases. “The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Dunton v. S.C. Bd. Of Exam’rs In Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) (citations omitted).

In this case, Dr. Slayman resigned following allegations of unprofessional conduct, i.e. that she threatened her immediate staff and created a hostile work environment. ROA 1715. These allegations are well within the scope of the statute. In fact, Dr. Slayman’s alleged conduct was so egregious and well within contemplation of the regulation, that the District commissioned an independent, seasoned educator with over forty years of experience in South Carolina, with no ties to the community to investigate these claims against Dr. Slayman. Id.

Appellant makes repeated assertions regarding what the District Board did and did not do in this case. The SCDE’s process of adjudicating educator certificate matters is wholly independent of how school Districts decide to resolve their local disputes. Thus, Appellant’s arguments about what the District decided, as evidence that the State Board should have done the

same are without merit. Since Appellant also misconstrues facts related to the District Board's actions, the Respondent is compelled to correct the record.

Appellant contends the Chester County School Board unanimously reached a consensus to allow Dr. Slayman to return to work. This is misleading. The record is clear that the Board decided to accept Dr. Slayman's resignation by a split 4-3 vote. ROA 1029. Her resignation followed the revelations first disclosed in the Bagley Report, which were followed by the written grievance signed and submitted by her immediate cabinet. ROA 1711. Dr. Slayman was allowed consult for the District as a term contained in the Settlement and Release executed as part of Dr. Slayman's resignation. ROA 1200. It is misleading to describe these events as a unanimous vote to allow Appellant to return to work. To suggest that the Chester County School Board took no action in response to the allegations of unprofessional conduct, does not provide important context for what transpired. Subsequent to and in response to Dr. Slayman's resignation amid allegations of unprofessional conduct, Dr. Dallicutt, Interim Superintendent, properly reported the matter to the SCDE pursuant to Regulation 43.58.1.

Appellant avers, that Dr. Callicutt (a defendant in a pending civil case filed by Dr. Slayman), violated a contract by reporting the matter to the SCDE, when the reporting requirement is mandated by the statute. ROA 1387. In fact, Dr. Callicutt could have jeopardized the District's accreditation and even his own credentials if he decided not to report the allegations of misconduct to the SCDE under these circumstances. Regulation 43-58.1 provides:

A district superintendent, on behalf of the local board of education, shall report to the Chair of the State Board of Education and the State Superintendent of Education, the name and certificate number of any certified educator who is dismissed, resigns, or is otherwise separated from employment with that district based on allegation of misconduct including but not limited to, misconduct involving drugs, sexual misconduct, the commission of a crime, immorality, moral turpitude, or dishonesty, that is reasonably believed by the district superintendent to constitute grounds for revocation or suspension of the certificate issued to the educator by the State Board. This report is required notwithstanding any termination

agreement to the contrary that the district board of trustees or superintendent may enter into with the educator. The reasons for the educator's termination of employment with the district shall also be provided along with all evidence in the possession of the district relating to the termination.

The intentional failure of a district board of trustees to instruct the district superintendent to report the termination of school employees as required by this regulation shall be considered by the State Department as an accreditation deficiency pursuant to R43-130 and, upon approval of the State Board of Education, all district schools will be placed on an accreditation status of probation.

The intentional failure of a district superintendent to report the termination of employees as required by this regulation shall be considered an act of unprofessional conduct and may be sufficient cause for revocation of such person's education certificate pursuant to Section 59-25-160, Code of Laws of South Carolina, 1976.

In support of her argument, Appellant provides an excerpt of testimony from Board Member Maggie James, who claimed that since Dr. Callicutt had no firsthand knowledge, he broke the law by reporting the matter to the SCDE³. Again, the District Board's actions in this case are largely irrelevant, especially when Appellant chose only a select few board members to testify. However, Appellant's attempt to utilize Ms. James' testimony in this way is instructive. On the one hand, Appellant argues that since Dr. Callicutt had no firsthand knowledge, his actions were unlawful. Yet, regarding the merits of this case, the Appellant expected the State Board to believe the testimony of consultants who occasionally worked for the District, over the testimony of the immediate cabinet members who possessed firsthand experiences with Dr. Slayman. Furthermore, Appellant's argument would also suggest that a Superintendent's report of unprofessional conduct pursuant to Regulation 43.58.1 requires the Superintendent to have firsthand knowledge, or participate in the investigation of the claim. Of course, no such requirement exists.

³ Ms. James is not a current or former SCDE employee and is not qualified to render an opinion on the State Board's Regulation or the SCDE's procedures.

For the foregoing reasons, the report of allegations of unprofessional conduct was proper, and the investigation by the SCDE that followed the report was warranted.

II. The investigative process, notice and pretrial exchange of information ensured Appellant's due process.

a. The SCDE did not violate Reg. 43-58.1

Appellant argues that she was not timely notified of an investigation by the SCDE. As referenced above, Appellant filed a Motion to Dismiss and Motion to Stay Proceedings prior to the hearing in this matter. The Hearing Officer denied the motions. While the time between the reporting letter (October 14, 2015) and the time of the hearing (October 3, 2018) is considerable, the Appellant could not articulate any discernable prejudice created by the delay. To the contrary, Appellant cites her work as a consultant for some of that time period.

There are no time requirements established by statute or regulation, which relate to the time for bringing a case, or sending notice to a certificate holder that the State Board is prepared to take action against a teaching certificate at the conclusion of the SCDE's investigation of the matter.

While the Appellant is claiming delay has violated her due process rights, she omits the fact that she requested a delay of an entire season, for her vacation plans throughout the summer so that the hearing could be scheduled in the fall of the year. ROA 45. Yet, during that same period of time, Appellant found time to file a civil action against many of the witnesses who would be called by the SCDE. Id. Only after that, did Appellant seek a stay of the educator certificate proceedings. Thus, Appellant's argument wholly lacks merit.

Appellant also argues that a news article violated her due process rights because a local newspaper reported that Dr. Slayman was being investigated by the SCDE. While she claims prejudice by the purported disclosure, Appellant fails to describe any way in which her due process rights were violated: i.e. how the purported violation of the regulation impacted her ability to call

witnesses or fully defend herself in the hearing of this matter. There is no evidence in the record that the article impacted witness testimony, and no evidence the article impacted her ability to work. Furthermore, all but one of the witnesses called by the SCDE in its case in chief were the grievants who sought the investigation of Appellant in the first place. It was certainly not news to them that Dr. Slayman was being investigated for her conduct. Thus, Appellant's claim of prejudice and violation of due process is without merit.

- b. The Complaint could not have been dismissed by the SCDE out of hand, as Appellant suggests.

Appellant contends that the allegations here amount to the complaints from disgruntled employees, allegations which do not rise to the level of the types of allegations investigated and handled by the SCDE. In support of her argument, Appellant points her finger at another educator (Moore) she believes got a pass. Initially, the SCDE would note these arguments are not preserved for appellate review. Appellant failed to make *any* objection to the State Board that she had received disparate treatment. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved or appellate review." Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). Appellant's failure to raise these issues before the State Board precludes her from raising them for the first time to this Court.

Notwithstanding the SCDE's objection to the appropriateness of raising this claim for the first time, the Appellant is asking the court to compare apples to oranges. It would be improper to divulge the nature of the SCDE's involvement, if any, in the Moore case. Furthermore, the SCDE has hundreds of unprofessional conducts complaints pending at any given time, all with their own eccentricities, and it is improper and illogical to compare one case to another for precedential purposes. Assuming *arguendo* that the facts outlined in Appellant's brief are true regarding the

Moore matter, the SCDE does not agree that a DUI, with no reported injuries, is somehow more unprofessional, more egregious and more disruptive to a district than a Superintendent threatening members of the senior staff/cabinet with grave bodily harm.

Appellant's contention that the allegations in this case do not rise to the level of of unprofessional conduct worthy of investigation are without merit.

c. The SCDE never sought to limit relevant and admissible testimony.

Appellant contends, without citation to the record, that counsel for the SCDE somehow inappropriately limited testimony. First, as referenced above, the SCDE argued the testimony from selected District Board members about what action the board took or failed to take was not relevant to the question of whether Appellant mistreated her senior cabinet members and created a hostile work environment. The record is replete with examples of how the cabinet members were to have little to no interaction with the board members outside of their specific duties to report and provide information within the scope of their employment with the district. According to Shawn Williams, Dr. Slayman warned: she would slit my throat if I ever spoke to the board members again. ROA 314. Aside from the issue of relevance, the SCDE sought to limit testimony from those select board member about discussions they had with the entire board in executive session, subject to privilege. ROA 984. Since Appellant selected only certain board members to testify, the SCDE took the position that privilege remained with the entire board, and certain members selected by the Appellant to testify ought not testify about those items discussed in executive session. Id. Notwithstanding the SCDE's position, multiple examples exist in the record, where witnesses for the Appellant testify about the purported rationale for actions taken by the District Board. Id. Appellant's contention that counsel for the SCDE sought to limit testimony is misleading, at best, and is belied by the fact that the record includes over thirty hours of testimony, and by the fact the

SCDE acquiesced to Appellant's request for additional time to obtain one more witness affidavit at the close of live testimony. ROA 1461. Thus, Appellant's argument is without merit.

III. The hearing before the State Board ensured Dr. Slayman's Due Process Rights and was in accordance with State Board Regulations and Procedures. The submission of the Order of Public Reprimand to NASTEC was customary and proper.

- a. The BCAF Procedures are not law, but serve as guidelines. Any alleged deviations from the BCAF did not deny Appellant's due process.

Appellant makes a number of arguments concerning the presentation of her case to the State Board, averring that the hearing violated her due process rights. These arguments are without merit. Initially, the SCDE would note these arguments are not preserved for appellate review. Appellant failed to make *any* objection to the State Board regarding the circumstances of the presentation of the case. Appellant did not offer any objection to the State Board on the grounds that the hearing officer was not present, she did not object to the allotted three minutes to address the State Board,⁴ nor did she ask that the matter not be reported to the NASDTEC Clearinghouse. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved or appellate review." Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). Appellant's failure to raise these issues before the State Board precludes her from raising them for the first time to this Court.

Error preservation concerns aside, Appellant's arguments are without merit. Appellant alleges she was prejudiced by several alleged violations of the State Board's Rule of Governance BCAF. Appellant references BCAF IV (K), the section outlining the presentation of the Hearing Officer's Report and Recommendation to the State Board. This presentation is incorrectly

⁴ Significantly, Counsel for Appellant failed to utilize the entirety of her allotted three minutes to address the State Board. Appellant was also invited to speak by the State Board but declined to do so, instead, deferring to her attorney's presentation.

referenced in Appellant's brief as the "Hearing before the State Board." App. Brief p. 15. It should be noted that the presentation to the State Board is a summary of the hearing, which was previously held over multiple days and during which Appellant was granted all due process rights. The presentation to the State Board is to present the Hearing Officer's Report and Recommendation from the hearing and any objections to the report. It is not intended to be a second hearing as Appellant seems to suggest.

In the context of an administrative hearing, Article I, section 22 of the South Carolina Constitution provides:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

"Section 22 provides for notice, an opportunity to be heard, an impartial adjudicator, and judicial review." Garris v. Governing Bd. Of South Carolina Reinsurance Facility, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998). Article I, § 22 requires an administrative agency provide notice and an opportunity to be heard, but does **not** require notice and an opportunity to be heard **at each level** of the administrative process. It mandates notice and an opportunity to be heard **at some point** before the agency makes its final decision. Ross v. MUSC, 328 S.C. 51, 72, 492 S.E. 2d 62, 69 (1997) (emphasis added).

Due Process requirements imposed on administrative hearings are not technical, and no particular form or procedure is necessary. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). While there are no technical requirements for procedural due process, an administrative proceeding must include: "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; (4) the right to confront and cross-examine witnesses. Id. S.C. Code Ann.

§ 59-5-70 (B): “The board in its discretion may also designate a hearing officer for the purpose of hearing matters related to the suspension or revocation of teacher certificates. The hearing officer shall then make a recommendation to the board for final action.” S.C. Code Ann. § 59-5-60.

Here, there is no dispute Appellant received adequate notice in the spring of 2018 that the State Board was prepared to take action against her certificate. ROA 4. Appellant, opted to schedule the hearing in the fall, before a hearing officer to serve as an impartial adjudicator. Appellant was provided every opportunity to heard, as the testimony took place over the course of five days, and the record was left open so that Appellant could attempt to obtain one last witness affidavit. ROA 1461. Appellant was afforded the right to introduce evidence, which is supported by the record. The only notable objection to evidence offered by Appellant, as outlined above, pertained to conversations between District Board members during executive session. ROA 984,985. Otherwise, Appellant was allowed to call multiple witnesses and introduce innumerable exhibits during the presentation of the case. Appellant was represented by counsel during the proceeding, and spent considerable time on cross-examination of the witnesses. She was able to confront each and every one of the grievants who testified on behalf of the SCDE. She was also able to cross-examine Ms. Jean Ligon called by the SCDE. The entire adjudicated record was presented to the State Board, including a complete hearing transcript, the Hearing Officer’s report and recommendation and the SCDE’s exceptions to the report. As noted in Ross, Appellant is not entitled to notice and opportunity to be heard at every level, i.e. before the Board-approved Hearing Officer, then again at the State Board meeting. The Hearing Officer, as the independent adjudicator provided that opportunity during the five days of testimony. Finally, Appellant is seeking judicial review of the proceedings. Thus, each tenant of procedural due process has been met in this case.

For over a year now, the SCDE has followed the practice of having a SCDE attorney present the Hearing Officer's Report and Recommendation to the State Board. This change was not unique to this matter, but took place after concerns were raised that State Board members were asking questions of the presenting hearing officer that were outside the scope of the hearing itself. A second concern was the unnecessary cost of paying a hearing officer to be present when they were limited to material already in the record. Therefore, it was decided that an attorney in the SCDE that had not been involved in the educator hearing would present the Hearing Officer's Report and Recommendation based on their review of the report. That is what occurred here. The Hearing Officer's Report and Recommendation was submitted to the State Board prior to the hearing, as well as a full copy of the transcript of the hearing, and the SCDE's exceptions to the Report and Recommendation.

Appellant further argues that she was limited to three minutes to speak before the State Board during the presentation of the Hearing's Officer's Report and Recommendation. It is true this limitation is not stated in BCAF. The BCAF only requires that the educator is notified of the time, date, and place of the hearing. BCAF(IV)(K). It does not state that an educator must be allowed to address the State Board or the length of time for such. At this point in the procedures, the educator has had the opportunity to address a statement to the SCDE's Certification Review Committee and present any evidence, including any testimony they wish the State Board to review, during the full hearing in front of the appointed hearing officer. Therefore, the SCDE believes it does not violate due process to limit an educator to three minutes during the presentation of the Hearing Officer's Report and Recommendation to avoid the presentation becoming a second hearing. See Ross, 328 S.C. at 595, 582 S.E.2d at 416 ("Article I, § 22 requires an administrative

agency provide notice and an opportunity to be heard, but does not require notice and an opportunity to be heard at each level of the administrative process.”)

Appellant then notes that BCAF does not mention reporting an Order of Public Reprimand to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse and appears to confuse BCAF with a regulation that would require promulgation. While BCAF does note an Order of Public Reprimand is reported to all school districts in South Carolina, the rule of governance does not specifically state the order will be reported to the NASDTEC Clearinghouse. For a number of years, the SCDE did not report public reprimands to NASDTEC. However, sometime in late 2016, an attorney with the SCDE learned that NASDTEC did require reports of public reprimands. Since early 2017, all orders of public reprimand have included language that the order was reported to the NASDTEC Clearinghouse. While there is no allegation Appellant committed a crime, or had any inappropriate interaction with a student, picking and choosing which Public Reprimands issued by the State Board to submit to the NASTEC could obviously could leave school districts vulnerable to educators seeking to keep hidden allegations of unprofessional conduct. While there is no allegation of a crime, or inappropriate interactions with students, reporting all Public Reprimands to NASTEC is commonplace across the country.

Pursuant to the Standards Manual for Drafting and Filing Regulations from the South Carolina State Register, regulations are not necessary for agency actions relating only to specified individuals. In the case of BCAF, those specified individuals are educators certified by the SCDE. As a rule of governance, BCAF is not intended to have the force of law. See S.C. Code Ann. 1-23-10(4) (“Policy or guidance issued by an agency other than in a regulation does not have the force

or effect of law.”). BCAF cites to applicable statutes and regulations as needed⁵ and offers a more compact view of the various South Carolina education and due process laws that govern educator certification hearings.

IV. The State Board properly issued the Order of Public Reprimand upon review of the hearing transcript, exhibits, and the Report and Recommendation along with exceptions.

- a. The State Board’s decision was not arbitrary and capricious.

The Hearing Officer’s Report and Recommendation is merely that, a recommendation to the State Board of Education. In her brief, Appellant first provides an excerpt from the recommendation. Critically, Appellant omits a footnote in her citation. The SCDE submitted approximately five single-spaced pages of exceptions to the Hearing Officer’s Report and Recommendation, including a lengthy exception to the passage cited in Appellant’s brief related to the omitted footnote, relating to a key witness. For ease of reference, the SCDE submitted exceptions in red throughout the Report and Recommendation. Below is the exception submitted by the SCDE, which was included in the State Board packet:

Hearing Officer:

The evidence presented at the hearing in support of these allegation was the testimony of the five employee that comprised Slayman’s senior cabinet.
FN: Although a sixth employee testified, she could not provide probative evidence as to any matter complained of.

Exception Submitted by the SCDE:

(False.) In this footnote, the hearing officer attempts to hide arguably the most important witness. A witness who was a longtime employee of the district, not a consultant, and not once of the five grievants accused of formulating a coup. Slayman testified: “And I’m gonna tell you, Jeannie Ligon is good.” Slayman called Ms. Ligon “PROBABLY THE STONGEST EMPLOYEE THAT THE DISTRICT HAS.” Tr. p. 1291, L. 22-24. Therefore, who better to share with the hearing officer and the SBE

⁵ The fact that BCAF cites actual regulations as well as statutes is prima facia proof that it is not a regulation itself.

what she observed regarding the work environment and the stress under which the senior cabinet was operating while Slayman was at the helm?

In her correspondence with the Board Chair, the Hearing Officer acknowledges that “reasonable minds can differ,” regarding the view of the evidence in this case. She even encourages the State Board to review the record: “Because of the wide disparity between the OGC’s view of the evidence in this case and my view of the evidence in this case, I would strongly encourage the Board members to read the transcript...”(ROA 1739) As Appellant correctly notes: “A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principals, or is governed by no fixed rules or standards.” (App. Brief. p. 22 citing: Okadigwe v. S.C. Dept’t of Labor, Licensing, & Regulation, No. 2017-001339, 2019 WL 2025269.) Here, the Hearing Officer in this case told the Chair of the State Board that the State Board may review the record and make an opposite, but no less rational, determination that just cause existed to take action in this case. In short, such a finding by the Board, upon review of the record would *not* be arbitrary and capricious according to the Hearing Officer.

Appellant also contends that counsel for the SCDE misstated evidence in the record without providing the misstatement. As noted above, the SCDE offered extensive and detailed exceptions to the Hearing Officer’s Report and Recommendation. Those exceptions were included in the Board packet transmitted to the State Board prior to the presentation of the Report and Recommendation. The SCDE highlighted what it believed to be glaring omissions in the Report and Recommendation, as well as those testimonies the SCDE believe the Hearing Officer failed to reconcile. For example, the SCDE believed Shawn Williams’ testimony was of particular importance and worthy of the scrutiny by the Board. Appellant threatened that she would “slit” Ms. Williams’ throat during a cabinet meeting. ROA 984. Not only was this testimony

corroborated by the other cabinet members in attendance, but the egregiousness of the incident was also confirmed by Appellant's own testimony of her apology to Ms. Williams. ROA 315. The SCDE highlighted this exchange between Appellant and Ms. Williams during its presentation to the State Board. Quoting testimony of witnesses is not misstating the evidence in the record as Appellant charges. Quoting a critical piece of testimony did not amount to a misstatement of evidence as alleged by Appellant.

Appellant contends that the testimony of Callie McConnell established that the filing of a grievance was a "coup". (App. Brief. p. 23). However, it is critical to highlight other testimony provided by Ms. McConnell that she *did not* have much interaction with Appellant's cabinet members. ROA 1110, 1111. As secretary to the School Board, Ms. McConnell's interactions were limited to members of the Board and the District Superintendent. Thus, the SCDE argued Ms. McConnell's admission that she has virtual no interaction with the grievants, should not be overlooked by the Hearing Officer or members of the State Board.

Appellant further alleges that Dr. King and Mr. Gardner "alleged public beratement by Dr. Slayman, yet no corroborating evidence was brought forth." (App. Brief p. 24) This statement is false on its face. Dr. King offered testimonial evidence about the public beratement, which was corroborated by Mr. Gardner's testimonial evidence describing the same event.

- b. The State Board's Decision is supported by the substantial evidence in the record.

Appellant correctly notes: "Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." (App. Brief, p. 26 citing Forman v. S.C. Dep't of Labor, 419 S.C. 64, 70, 796 S.E.2d 138, 141 (Ct. App. 2016)). As referenced above, the Hearing Officer communicated to the Chair of the State Board of Education, that "reasonable minds can differ..." when reviewing the record in this case.

Here, the record before the State Board contained a complete transcript of all the testimony and exhibits of the proceeding. Additionally, the State Board reviewed the Hearing Officer's Report and Recommendation, along with the document containing all of the exceptions to the report highlighted in red. In short, the State Board had the entire record to review and consider before voting for and approving the Order of Public Reprimand.

Appellant seeks to re-litigate the facts of this case, and seeks to disparage the witnesses called by the SCDE. In doing so, she again misconstrues facts that are not established by the record. For example, the record does not establish that the grievants had self-serving motives or that the group had a concerted effort, or planned a coup. The testimony of the grievants establishes exactly the opposite. There is nothing in the record establishing several meetings among the grievants plotting the purported "coup". There is nothing in the record establishing how any of the grievants sought to benefit from Appellant's resignation. Nor is there any evidence of how any of the grievants actually benefits from Appellant's resignation. Ultimately, what the Record On Appeal clearly establishes, is that the State Board had before it ample evidence and testimony upon which to base its decision for an Order of Public Reprimand. Based upon the record presented, the State Board's Order of Public Reprimand was reasonable, under these circumstances. Furthermore, the Hearing Officer predicted that such an outcome could be reached. Thus, the State Board decided this matter precisely in the way the Hearing Officer indicated that they could decide the matter, when the State Board took the opposing, but no less reasonable view of the facts and evidence in this case. Appellant's contention that substantial evidence does not exist to support the State Board's determination in this case is wholly without merit.

- c. The State Board considered the mitigating circumstances contained in the record.

Appellant contends that the State Board must have failed to consider her accomplishments.

As noted above, the State Board was presented all of the mitigating circumstances, or evidence of good character Appellant was allowed to present in this case. Arguably, the majority of the testimony presented on her behalf could have been considered character evidence since the witnesses Appellant called had relatively little interaction with her as compared with the grievants. The SCDE did not object to the presentation of Appellant's accolades, except to point out that many of the accomplishments she touted occurred during the tenure of her senior cabinet. ROA 1374. On the one hand, Appellant was eager to show all her good works during her time as Superintendent. Yet, counsel for Appellant sought to tear down each and every one of the cabinet members who testified, by attempting to impugn their integrity, questioning their work ethic, and pitting them against each other. Yet, Appellant was able to tout all of her accomplishments as mitigating evidence, and rightly so. But in the end, she conceded on cross-examination that she did not accomplish those things with the help of those vital cabinet members she sought to impugn in the hearing of this matter. *Id.*

Appellant's argument that the State Board failed to consider mitigating circumstances is without merit, since those same argument were presented in the hearing of this matter and included in the record before the State Board for their consideration.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgement of the State Board of Education be affirmed.

Respectfully submitted,



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December 23, 2019

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STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM SOUTH CAROLINA STATE BOARD OF EDUCATION

Appellate Case No. 19-AIJ-30-0337-AP

The South Carolina Department of Education,

Respondent,

v.


Dr. Agnes M. Slayman

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 208, SCACR.

Respectfully submitted,


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FILED
DEC 23 2019

PROOF OF SERVICE OF RESPONDENT'S BRIEF

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA DEPARTMENT OF EDUCATION

Docket No. 19-ALJ-30-0337-AP

Dr. Agnes Slayman,

Appellant,

v.

South Carolina Department of Education,

Respondent.

PROOF OF SERVICE

I certify that I have served the Brief of Respondent on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to Appellant's attorney of record, Shannon Polvi, Esq. Cromer Babb Porter & Hicks, LLC, PO Box 11675, Columbia, SC 29211, on December 30, 2019. Further, Respondent's Brief was served on counsel via electronic communication on December 23, 2019. I further certify that all parties required by Rule to be served have been served.

December 30, 2019

SOUTH CAROLINA
DEPARTMENT OF EDUCATION

By: 

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FILED

DEC 30 2019

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dr. Agnes Slayman,

Appellant,

v.

South Carolina Department of Education,

Respondent.

Docket No. 19-ALJ-30-0337-AP

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SC ADMIN LAW COURT

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ARGUMENT¹

I. The Due Process violations require the reversal of the Public Reprimand.

The SCDE did not follow the written regulations and BCAF procedures. (See Appellant's Brief). The SCDE does not contest that it did not follow the written BCAF procedures. Instead, it offers excuses about why it made changes to the regulations. (See Respondent's Brief, pp. 13-18). All such purported changes are not in writing and do not meet the regulatory change requirements of South Carolina, as described in Appellant's Brief.

These facts are germane to the notice and modification issues recently analyzed in *Pickens County v. S.C. Dep't of Health & Env'tl. Control*, an appellate decision that was issued on January 8, 2020. *Pickens Cnty. v. S.C. Dep't of Health & Env'tl. Control*, No. 2017-000066 (S.C. Ct. App. January 8, 2020). Though the *Pickens County* case involves a permitting decision, and this case involves an educator certification reprimand, the same principles apply. Both cases parallel attention to the requirement that state agencies must follow the rules that are written and established so as to ensure a fair and adequate proceeding.

Our supreme court reiterated this in *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 390 S.C. 418, 702 S.E.2d 246 (2010), in which the Coastal Conservation League sought review of a critical area permitting decision more than fifteen days after DHEC issued the staff decision. DHEC failed to notify the Coastal Conservation League as required by statute; thus, the time limitations for review did not start to run until DHEC corrected its notice error. *Id.* at 430, 702 S.E.2d at 253. The plain language of § 44-1-60(A) supports this conclusion here as well: "All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits . . . shall be made using the procedures set forth in this section." The procedures in § 44-1-60 particularly emphasize public notification, as reflected in § 44-1-60(B). **Only after** DHEC issues a staff decision **in compliance with the procedural and notice dictates of its own regulations and of § 44-1-60** subsections (A) through (E), does subsection (E)(1) trigger the fifteen day deadline for an appeal of the decision to the DHEC Board. *See also Leventis v. S.C. Dep't of Health & Env'tl. Control*, 340 S.C. 118, 143 n.14, 530 S.E.2d 643, 657 n.14 (Ct. App. 2000).

¹ Due to the ten-page limit for the Reply Brief, Appellant cannot revisit all her legal arguments in this Reply Brief. Appellant incorporates such arguments herein and does not abandon any of her previous arguments asserted in the Appellant's Brief.

Id., p. 13 (emphasis added). Apply that same legal analysis to this case. There are regulatory and procedural failures here. First, Appellant was not notified of a complaint against her educator's certificate for 896 days. That timeframe is an uncontested fact. (Respondent's Brief, p. 10). Second, SCDE enacted no written changes to the regulations or BCAF procedures to modify what the regulations and procedures required throughout the pendency of the complaint proceeding. (See Appellant's Brief, pp. 15-21). Third, the SCDE's failure to not follow the requirements for adoption, amendment, and repeal of Regulations, and changing the Procedures for an educator's hearing with no written modifications to BCAF since April 12, 2016, amounts to a denial of Dr. Slayman's procedural due process rights.

This written and formalized mode of the adoption of rules, the amending of rules, and the repeal of rules is fundamental to the rule of law. *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 447, 823 S.E.2d 193, 197 (Ct. App. 2018), reh'g denied (Feb. 19, 2019), cert. denied (June 28, 2019). Procedural due process is denied when a state agency fails to follow the requirements for altering regulations. *Id.* The SCDE has made no official state publication of the regulation changes it purported to have made to R43-58 or the Procedures for Educator Certification Hearings as set forth in BCAF and no written changes were identified in Respondent's Brief. The SCDE merely identified changes to its *practices*, but not the written rules it is required to follow.

Appellant cannot emphasize enough that the most egregious violation of the State Board's rules was its failure to follow BCAF IV(K). The Procedure states that the hearing officer will present her finalized report to the Board. In the case of Dr. Slayman, this did not happen. There is no permissive language in BCAF IV(K), the written procedure, states, "the hearing officer will formulate a written report stating his or her findings of fact and recommended action and will present the report to the Board for consideration." (emphasis added). Here, rather than allow the

Hearing Officer to present her report to the Board as required by BCAF, the SCDE disallowed the Hearing Officer from presenting her findings.

The SCDE has not changed the written procedure and the SCDE acknowledges that it has been violating that written procedure “for over a year now.” (Respondent’s Brief, p. 16). Furthermore, the SCDE stated that “[t]he presentation to the State Board is to present the Hearing Officer’s Report and Recommendation from the hearing and any objections to the report.” (Respondent’s Brief, p. 14). Here, the Hearing Officer did not present anything to the State Board. Mr. Gunter, selected by the SCDE to present their abbreviation of the thirty-hour hearing to the State Board, did not attend the hearing, had no personal knowledge of the hearing, and is not an impartial adjudicator because he is an attorney solely representing the SCDE’s interests.

Mr. Gunter and Mr. Winburn are both attorneys employed by, and representing, the SCDE. Ethically, professionally, and financially they are solely tasked with representing their own clients’ interests. Comparatively, the same would apply to Appellant’s counsel; she cannot both advocate for Appellant’s interests and the SCDE’s interests when these parties are in an adversarial proceeding with conflicting interests. There is no way for either Mr. Gunter, Mr. Winburn, or any other SCDE attorney to both represent their client, the SCDE, and serve as an impartial adjudicator to the State Board. Thus, the very purpose of why the BCAF Procedures were written requiring the Hearing Officer, the impartial adjudicator, to present his or her findings to the State Board. Preventing questions to the Hearing Officer and costs savings (described as the SCDE’s rationale on page 16 of Respondent’s Brief) do not resolve the Constitutional failures that transpired.

Appellant is greatly prejudiced by the procedural failures described here and in Appellant’s Brief. Respondent argues that notice, an opportunity to be heard, an impartial adjudicator, and judicial review were provided to Appellant. Such due process requirements were not provided to

Appellant when the procedures that are established to guarantee those rights are not followed by the SCDE. The SCDE designated Ms. Pike as the Hearing Officer and she was tasked with being an impartial adjudicator overseeing thirty hours of testimony. Yet, somehow the State Board is supposed to make a valid decision when it did not hear from her, as required by the written rules, and the SCDE's substitute presenting the issues only provided a brief abbreviation of what the actual adjudicator recommended to the State Board. Furthermore, the SCDE sought to limit Dr. Slayman's ability to be heard when it sought to prevent Sandra Stroman, Maggie James, William Stringfellow, and Jim Stroman from testifying with full disclosure about the grievance against Dr. Slayman and the Chester County School Board's deliberations about its credibility.

When the State seeks to take action against a professional license, Constitutional interests are implicated, and procedural due process requirements must be met. See *Brown v. South Carolina State Bd. of Educ.* 301 S.C. 326, 329, 391 S.E.2d 866, 886 (1990); *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752 (1957). Here, it is obvious from the record that those requirements have not been met. The State Board decided not to follow their own procedures that would have ensured a fair process. Instead, the SCDE created arbitrary rules found nowhere in the Procedures or Regulations that did nothing but prejudice Dr. Slayman's substantial rights. All such issues were preserved; Appellant filed a pre-hearing Motion to Dismiss and expressly asserted therein that the proceedings violated her due process rights.

II. The State Board erred when not following the recommendation of the Hearing Officer to dismiss the Complaint against Dr. Slayman.

The Hearing Officer, the impartial adjudicator acknowledged by the SCDE in Respondent's Brief as necessary to Appellant's due process rights and, after hearing 30 hours of testimony, recommended the dismissal of the complaint and no action taken against Dr. Slayman's certification. The State Board heard essentially six minutes of perfunctory information, that can

amount to nothing more than an introduction of the parties, and from that perfunctory six minutes they issued a Public Reprimand to Dr. Slayman. By its very nature, such a decision is erroneous and arbitrary and capricious.

Courts require the governmental entity evaluate the evidence and carry out their important responsibilities consistently, within the ‘objective and measurable framework’ the law provides.” *Daufuskie Island Util. Co., Inc. v. S.C. Office of Regulatory Staff*, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019) reh'g denied (Sept. 27, 2019). Here, Mr. Winburn went before the State Board and inflamed their sentiments by asserting that Dr. Slayman went around the workplace threatening employees and if that was not the type of action that should be disciplined then what is. Whereas, the record reflects that the grievants’ allegations are false with the single exception of a single misidentified statement made, more than two years prior to the grievance and five years prior to the hearing, by Dr. Slayman to Williams.

Williams felt that Dr. Slayman’s statement to her on August 20, 2013, was inappropriate. This grievance was not filed until September 8, 2015. Williams did not file a grievance for over two years about a matter that allegedly made her feel threatened. The concept defies logic. Williams worked with Dr. Slayman for more than another two years on a daily basis; she was the head of HR and Dr. Slayman was the Superintendent. If this action had merited the Public Reprimand that Dr. Slayman received, Williams, as the top HR official in the District, would have personal knowledge about all of the avenues available to her to address the matter, if the conduct were truly as she alleges. Williams took none of these steps.

On the one occasion Williams brought a concern to Dr. Slayman’s attention, on August 20, 2013, as confirmed by Williams’ own testimony during cross examination, Dr. Slayman respectfully heard Williams’ concerns, assured Williams that she would not make statements of

the nature that Williams said made her uncomfortable, Dr. Slayman apologized, and Williams confirmed that Dr. Slayman followed up on her statement and never engaged in making such statements again. (Williams Testimony, p. 271, l. 10 - p. 274, l. 25; see also Dr. Slayman Testimony, p. 1255, l. 12- p. 1258, l. 4). Clearly, the State Board knew none of those facts from a three-minute introduction and Dr. Green, a State Board Member, asking about what the recommendation was from the Hearing Officer.

King and Gardner alleged public beratement by Dr. Slayman, yet no corroborating evidence was brought forth. (R&R p. 23). The Hearing Officer rationally made the determination that King and Gardner were not telling the truth, by hearing hours of extensive witness testimony to the contrary of what the grievants asserted against Dr. Slayman. (See i.e. Stiver Testimony, p. 501, l. 5- p. 504, l. 15). Such testimony included Reverend Stringfellow, a 76-year-old member of the Chester County School Board, an extremely credible witness. He has been a preacher for 55 years, a resident of Chester all his life, President of the Chester Branch of the NAACP, he knows nearly everyone in the Chester area, his family cumulatively has probably 150 years of employment with the Chester County School District, hundreds of his relatives have been educated by the District, and cumulatively he served on the School Board for about 28 years. (See ROA 919-922). Here is an excerpt of Reverend Stringfellow's testimony:

Q: When you were on the board, were Charles King, Jeff Gardner, Brooke Clinton, Anne Stroud, and Shawn Williams serving in Dr. Slayman's senior cabinet? A: Yes.

Q: And can you describe for us, at the board meetings were there times that the senior cabinet spoke to the board? A: Yes.

Q: And did you ever see Dr. Slayman discourage those individuals from speaking with the board? A: No, ma'am. Not at all.

Q: And when you say not at all, can you explain to us kind of what your impression of - or what you observed her interaction with her senior cabinet in your observations?

A: My observation from what I've seen, they were very pleasant. She was very pleasant with them. And there was no hesitant of anything they wanted to ask. At least they asked me, anyway, all the time. We had no problem with that with no communication.

Q: So would it be fair to say that the senior cabinet felt comfortable to speak with you?

A: Yes, ma'am.

(ROA 923 - 924 (Testimony, p. 839, l. 14 - p. 840, l. 14). ...

Q: ...Did any of the senior staff mention to you that they were working in a hostile work environment? A: No, ma'am.

Q: And about how frequently did you personally interact with the senior cabinet?

A: Almost every day when I was on the board for some reason I [was] out in the building or in the working area where they [were] at.

Q: Did any of the senior cabinet ever appear to you when you were physically looking at them that they had any kind of emotional issues going on? A: No, ma'am.

Q: And did any of the senior staff ever give you any indication that they were having health issues because of any treatment from Dr. Slayman? A: No, ma'am.

Q: Did any of the senior staff appear to be afraid of intimidated in any kind of manner?

A: No, ma'am.

Q: And when you mentioned that you saw the senior cabinet almost every day, did anyone ever leave Dr. Slayman's office in tears or upset when you were around?

A: No. I haven't seen that.

Q: Did you ever hear Dr. Slayman make any threatening remarks to anyone? A: No, ma'am.

(ROA 927-928 (Testimony p. 843, l. 4 - p. 844, l. 8). Reverend Stringfellow's testimony is one of many that demolishes the credibility of the grievants' testimony. (See ROA 938).

The Respondent's Brief seeks to bolster the credibility of the grievants and their one other witness, but their testimony is like a house of cards. (See i.e. ROA 938-93). Charles King and Jeff Gardner were seeking Dr. Slayman's job. (See i.e. James Testimony p. 983, l. 19-23; McConnell Testimony p. 1028, l. 15 - p. 1030, l. 5). There remained several deficiencies (see i.e. Dr. Bain testimony) and personal motivations for these individuals to jointly concoct a plan to oust Dr. Slayman. (See i.e. the testimony of Board Member, ROA 930-937). The Court need not simply rely on Appellant's assertion, an additional twelve witnesses testified in support of Dr. Slayman and testified about the falsity of the allegations against her. Even the grievants admitted to several of those ulterior motives during their own testimony. The Hearing Officer concluded that the

evidence showed a dismissal of the complaint against Dr. Slayman was necessary. (See R&R).

III. The Complaint should have been dismissed prior to the hearing.

Notably, the SCDE takes a conflicting position in the Respondent's Brief about what misconduct must be reported and what misconduct must be investigated. The SCDE asserts that "[t]he report of alleged unprofessional misconduct is mandatory" under Regulation 43-58.1 (Respondent's Brief, p. 6) and that "the SCDE is charged with the administration of the regulation (Respondent's Brief, p. 7). Yet, when rebutting the Appellant's arguments that when a comparator superintendent engaged in misconduct that, pursuant to S.C. Code Ann. § 59-25-160(5), is a ground for revocation or suspension of an educator's license, the SCDE has taken no action and the SCDE even helped her by hiring Dr. Moore as their Director of the Office of Early Learning and Literacy. Dr. Moore was arrested; comparatively, the unsubstantiated conduct alleged against Dr. Slayman has never amounted to conduct requiring revocation or suspension of her educator's certificate. The SCDE's response is to assert that an educator's DUI, which is statutory misconduct for suspension or revocation of an educator's license, is not misconduct warranting the same application of the SCDE's arguments that Dr. Callicutt had mandatory reporting and that the SCDE had to investigate and pursue the complaint against Dr. Slayman.

Thus, the SCDE's application of the regulations is fundamentally flawed. An agency need not exercise its discipline discretion identically in every case, but it must follow its governing regulations. See *Daufuskie*, 427 S.C. 458, 832 S.E.2d 572; *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 332 S.E.2d 539 (Ct. App. 1985). The State Board's decision about what penalty to issue is discretionary, but whether the SCDE follows the reporting and investigation regulations is not. If the SCDE purports that R43-58 and R43-58.1 require a hearing against Dr. Slayman (it so purports); then, it must also do so against all educators faced with complaints of misconduct.

It is important to make clear that the comparison between Dr. Slayman and Dr. Moore is

not in the reprimand, as the SCDE asserts that it is “apples and oranges”. (See Respondent’s Brief, p. 11). Appellant acknowledges that *Deese* establishes reprimands can be different; here, the comparison is the reporting and investigation of misconduct, and whether a hearing is even necessary against an educator. *Deese*, 286 S.C. 182, 332 S.E.2d 539. If a hearing is not necessary against Dr. Moore; then, a hearing is not necessary against Dr. Slayman. To do otherwise, where the SCDE has arbitrarily pursued an investigation and hearing against Dr. Slayman’s licensure, amounts to due process violations.

The SCDE asserts that misconduct is mandatory reporting and mandatory investigation under R43-58.1. The issue remains unaddressed that Dr. Callicutt, the reporting complainant against Dr. Slayman, could not have a reasonable belief that there were grounds for revocation or suspension of Dr. Slayman’s certificate. (ROA 1052-1053 (James Testimony p. 968, l. 14 - p. 969, l. 3)). That argument by Appellant is further supported by the fact that the SCDE did not call Dr. Callicutt as a witness to be heard by the Hearing Officer. (See ROA). Dr. Callicutt was not called as a witness, because he had no personal knowledge about any of these matters.

The fact remains that Dr. Slayman voluntarily resigned in good standing as superintendent. (ROA 974-975 (James Testimony p. 890, l. 20 - p. 891, l. 9)). After the grievance was filed and heard by the Chester County School Board and after the Bagley Report was discussed on September 8, 2015, the Chester County School Board unanimously reached a consensus to allow Dr. Slayman to return to work. (ROA 1059-1060, James Testimony p. 975, l. 23 - p. p. 976, l. 13). Thereby, the Chester County School Board did not act on the Bagley Report and the false allegations about Dr. Slayman memorialized therein were not adopted by the Chester County School District. (Id.). Furthermore, on September 30, 2015, the Chester County School Board voted to find the grievance “moot” and the majority of the Board wanted to find “no merit”. (Id.).

Dr. Slayman was not fired or forced to resign. (ROA 1416-1417 (Slayman Testimony, p. 1332, l. 14 - p. 1333, l. 3). Dr. Slayman was not found by the Chester County School Board body to have engaged in the conduct alleged in the grievance, and the District contractually agreed to that on September 30, 2015. Furthermore, Dr. Slayman continued employment with the District as a consultant for the time period of September 24, 2015 through June 20, 2016.

Yet, on October 14, 2015, Dr. Callicutt, the Interim Superintendent with no personal knowledge of what he was complaining about, intentionally acted expressly contradictory to the District's contractual and factual findings by falsely alleging that Dr. Slayman had engaged in conduct requiring a report per R43-58.1. The filing of the Complaint was a voluntary report intended to harm Dr. Slayman and the Complaint was filed in direct violation of the contractual agreement executed by Dr. Slayman and the District on September 30, 2015.

The SCDE also engaged in communications in violation of R43-58.1,² which requires that no preliminary information gathered by the SCDE concerning misconduct shall be disclosed to any third party. Thus, the SCDE further prejudiced Dr. Slayman's substantial rights by disclosing that an investigation was occurring, and this is compounded by the egregious nature of failing to formally notify Dr. Slayman of the complaint or any investigation related thereto, for 896 days.

CONCLUSION

For the foregoing reasons, those in Appellant's Brief, and in the Record on Appeal, Appellant asks that the decision of the State Board of Education be reversed and vacated so that the Public Reprimand is retracted, and notification of such retraction is issued to all of the entities informed of the Public Reprimand.

² *State Department of Education Investigating Slayman*, The News & Reporter, January 14, 2016. <https://www.onlinechester.com/content/state-department-education-investigating-slayman>.

Respectfully submitted,

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January 10, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dr. Agnes Slayman,

Appellant,

v.

South Carolina Department of Education,

Respondent.

Docket No. 19-ALJ-30-0337-AP

PROOF OF SERVICE

I certify that I, the undersigned paralegal of Cromer Babb Porter & Hicks, LLC, caused to have served Appellant's Reply Brief on counsel for Respondent by U.S. Mail and via email on January 10, 2020, addressed to the following:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 2020-000950

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SC Court of Appeals

Dr. Agnes Slayman Appellant

v.


South Carolina Department of Education Respondents.

CERTIFICATE OF COUNSEL

The undersigned here certifies, in accord with Rule 210(g), SCACR that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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